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UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MARIO ALFONSO GARCIA-
OLIVARES; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75743

Agency Nos. A76-853-803

A76-853-804

A76-853-805

A76-853-877

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 13, 2006**

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Mario Alfonso Garcia-Olivares, his wife Emma Ramirez De Garcia, and their two minor children, Emmelin Mayte Garcia-Ramirez and Bruno Alfonso Garcia-Ramirez, natives and citizens of Mexico, petition for review of the Board

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of Immigration Appeals’ (“BIA”) order dismissing their appeal from an immigration judge’s order pretermittting their applications for cancellation of removal on the ground that they were statutorily precluded from establishing good moral character. We have jurisdiction under 8 U.S.C. § 1252(a)(1) to review whether an alien’s conduct falls within a per se exclusion category for purposes of eligibility for cancellation of removal. *Romero-Torres v. Ashcroft*, 327 F.3d 887, 890 (9th Cir. 2003). We review findings of fact for substantial evidence. *Moran v. Ashcroft*, 395 F.3d 1089, 1091 (9th Cir. 2005). We grant the petition for review, and remand for further proceedings.

The adult petitioners testified that they paid a smuggler to assist them and their minor children to enter the United States without inspection. The BIA concluded that the adult petitioners were statutorily ineligible for cancellation and ineligible for a waiver. *See* 8 U.S.C. §§ 1101(f)(3), 1182(a)(6)(E)(i) (stating that an alien who assists another alien to enter the United States in violation of the law fails the moral character requirement for cancellation of removal). The agency, however, did not have the benefit of this court’s recent decision in *Moran*, 395 F.3d at 1094, which indicates that the adult petitioners are eligible for a family unity waiver. *See id.* (stating that “the alien-smuggling provision . . . does not operate to deny the applicant statutory eligibility for cancellation of removal . . .

because the Attorney General may waive the applicability of the alien-smuggling provision” when the applicant assisted his or her son or daughter to enter the United States in violation of the law.) The adult petitioners therefore remain eligible for cancellation of removal and the agency improperly pretermitted their applications. *See id.*

In accordance with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002), we remand for further proceedings consistent with this decision.

PETITION FOR REVIEW GRANTED; REMANDED